Supreme Court, U.S.
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No. 01-1061

In the
Supreme Court of the United States

PROGRAMMED LAND, INC., ET AL.,
Petitioners,

v.

PATRICK O'CONNOR, IN HIS CAPACITY AS TREASURER AND AUDITOR FOR HENNEPIN COUNTY, MINNESOTA, ET AL.,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE MINNESOTA SUPREME COURT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Questions Presented

The Dakota County Respondents respectfully disagree with the presentation of the questions appearing in the Petition for Writ of Certiorari and submit the following presentation of the questions for review.

I. Whether the State of Minnesota's statutory remedies that allow the owner of a real property to challenge a county's real property tax assessment process on multiple occasions complies with the requirements of the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

II. Whether a property tax assessment error by the county assessor's office in classifying and applying class tax rates to some commercial and industrial property results in a violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

Parties to the Proceeding and Rule 29.6 Statement

Thomas Novak, in his capacity as Treasurer and Auditor for Dakota County, Minnesota, the Dakota County Board of Commissioners, and Dakota County, Minnesota, are referred to collectively throughout this Brief in Opposition as the "Dakota County Respondents." The Dakota County Respondents accept the Statement of the Parties to the Proceeding as listed in the Petition for Writ of Certiorari.

None of the Dakota County Respondents are corporations.

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STATEMENT OF OPINIONS BELOW

Dakota County Respondents accept the Petitioners' Statement of Opinions Below. The opinion of the Minnesota Supreme Court is included as Exhibit A to the Petition for Writ of Certiorari.

STATEMENT OF JURISDICTION

Dakota County Respondents accept Petitioners' Statement of Jurisdiction.

STATEMENT OF THE CASE

The Petitioners seek review of a decision of the Minnesota Supreme Court in two separate actions that the Minnesota Court of Appeals consolidated for appeal. One action originated in Dakota County district court and the other in Hennepin County district court. The Dakota County and Hennepin County cases contain some unique records and facts that are relevant to the decision of the Minnesota Supreme Court. This Brief in Opposition will focus on the facts and issues that arose in the Dakota County case.

The Minnesota Property Tax System

The Dakota County Respondents are all participants, in varying capacities, in the process of levying and collecting real property taxes in Dakota County, Minnesota. The Minnesota property tax system is a complex process that annually collects revenue for the operation of local units of government including school districts, cities, townships and counties.

To accomplish this task, the Minnesota Legislature has created many different classifications and sub-classifications of real property with differing class tax rates. School

districts, cities, townships and counties adopt their own tax levies in December of each year, and these levies are included in the formula used to calculate the taxes owed for each property for the following year. Therefore, the amount of tax assessed against a property is dependant, in part, upon its geographical location within the county. In Dakota County, sophisticated computer programs perform the task of taking into account all the relevant information and varying factors and calculating the final tax bill for each property.

The component of the property tax system that has been challenged by the Petitioners in this case is referred to as the "assessment process." (Appendix to the Petition for Writ of Certiorari, 15a-16a) The county assessor in each of Minnesota's 87 counties performs this "assessment process" each year and passes the results onto the county auditor. The assessor's tasks include determining the market value of the property, assigning the proper classification to the property and applying the appropriate class tax rate or rates to the property's market value to determine that portion of the full value of the property to which the taxes will be applied. This latter task is referred to in Minnesota tax statutes as calculating the "net tax capacity" of the property. (Appendix to Petition for Writ of Certiorari, 11a-12a).

Through a misinterpretation of the classification statute applicable to commercial and industrial property, the Dakota County assessor's office erred by not assigning the preferred classification to some of those properties in 1993 and 1994. Therefore, a higher tax rate was applied to a portion of the market value of some commercial or industrial properties during those years. There is no allegation that a mechanical or hardware problem arose when the computers calculated the tax bills. The error occurred in the decision of the assessor's office on whether the properties qualified for the preferred class rate, based upon a misapplication of the commercial-industrial property classification statute.

The Petitioners sought a refund of taxes paid in excess of the preferred class tax rate in 1993 and 1994, but did not commence the action within the time required by Minn. Stat. § 278.01 to challenge the taxes paid in 1993. The Petitioners did file their tax petition in time to challenge the "assessment process" for the taxes owed in 1994, and they obtained relief when Dakota County corrected the 1994 tax assessments.

The Petitioners Received Three Notices

The Minnesota Legislature has gone to great pains to provide taxpayers and the public with information pertaining to the annual levy of property taxes and the taxes imposed on each property. Taxpayers receive a notice of the estimated market value of the property in April or May of the year prior to the year the taxes are due. Minn. Stat. § 273.121 (2000). Taxpayers receive a second notice in November of the year preceding the year the taxes are due. This notice is referred to as the "truth-in-taxation" notice. It informs taxpayers of the estimated market value of the property, the proposed classification, an estimate of the amount of the tax due the next year, and notice of the date and time that the local taxing jurisdictions will hold meetings to discuss the local tax levies for the next year. Minn. Stat. § 275.065 (2000). The third notice received by the taxpayers is the actual tax statement containing the amount of the tax due on the property. The statement must be sent to the taxpayers by March 31 of the year the taxes are due. This statement also contains the market value and classification of the property and a break out of the amount of the tax imposed by each of the applicable local taxing jurisdictions. At trial the Petitioners admitted through stipulated facts that they received all of the property tax notices and statements as required by law. (Appendix to Petition for Writ of Certiorari, 64a).

Throughout the Petition, the Petitioners repeatedly refer to their inability to discern the exact tax rates that were

applied to their properties as evidence that they did not receive adequate notice. However, the error of the assessor's office did not occur in the final phase of the taxation process that generated the final tax statement indicating the amount of the taxes owed, but rather in the classification phase. The decision of the assessor on the proper classification, and the application of the associated class tax rates to these properties, was made long before the final tax statement was prepared and mailed to the Petitioners. The Petitioners were informed of the classification their property would receive in both the "truth-in-taxation" notice and the final tax statement. By reviewing this information, the Petitioners could have discovered the classification problem and lodged a protest. They did not do so until after the deadline for obtaining relief from the 1993 taxes had passed. They obtained relief for the 1994 taxes

Minnesota has Provided Multiple, Adequate Remedies

The Minnesota Legislature has created many opportunities for taxpayers to challenge any errors that may occur in the "assessment process."[1] The Minnesota Supreme Court acknowledged that these statutory tools provide a variety of effective remedies for taxpayers to challenge the results of the tax assessment process.[2] The fact that the Petitioners did not realize that a classification error had

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[1] The remedies available to the Petitioners include appearing before the Local Board of Review and Equalization to challenge property valuation, seeking adjustments directly with the County Assessor, filing a tax petition under Minn. Stat. § 278.01 by March 31 of the year the taxes are due to obtain review by a state district court or the Minnesota Tax Court, and filing a request for abatement of taxes with the County by December 31 of the year the taxes are due, or within an additional two years if the error in the assessment process is a clerical one. (Appendix to the Petition for Writ of Certiorari, 21a-22a)

[2] Appendix to Petition for Writ of Certiorari, 21a-22a.

occurred until the deadline for challenging the 1993 taxes does not alter the procedural requirements for challenging the assessment process.

Since 1935 when the Minnesota Legislature adopted the current remedial statute for taxpayers to challenge real property tax assessments (Minn. Stat. § 278.01), the Minnesota Supreme Court has required that taxpayers utilize the statutory remedies and comply with the procedural requirements to obtain relief. The focal point of this litigation is whether the taxpayers acted in a timely manner to preserve their rights to challenge the assessment of their property. The multiple remedies available to the Petitioners comply with Due Process Clause requirements, but the Petitioners failed to employ them in time to challenge the taxes owed in 1993.

The Petitioners Utilized a Statutory Remedy to Obtain Relief From the 1994 Taxes

It is ironic that the Petitioners claim the State does not provide a meaningful opportunity to obtain review of their property taxes when, in fact, the Petitioners were provided relief from the taxes owed in 1994. After learning of the classification problem, the Petitioners filed timely Minn. Stat. § 278.01 tax petitions in Dakota County district court. After investigating the Petitioners' claims, Dakota County lowered the amount of taxes due in 1994 by applying the corrected classification and class tax rate. The Petitioners' successful use of the § 278.01 tax petition process is proof in itself that they had access to a meaningful statutory remedy.

REASONS FOR DENYING THE PETITION

I. ALTHOUGH THE MINNESOTA SUPREME COURT CONSIDERED AND REJECTED THE FEDERAL CONSTITUTIONAL ARGUMENTS OF THE PETITIONERS, IT BASED ITS DECISION ON ADEQUATE STATE LAW, AND NOT ON AN IMPROPER APPLICATION OF FEDERAL LAW.

The Petitioners seek review of a Minnesota Supreme Court decision that focuses almost entirely on specific and unique questions of Minnesota real property taxation laws. The Minnesota Supreme Court decided this case on adequate state law grounds. The Court engaged in a limited, although sufficient, discussion of federal constitutional issues. However, the great bulk of the majority opinion consists of an analysis of state law issues.

A critical component of the decision of the Minnesota Supreme Court below is the application of Minn. Stat. § 278.01 to the specific facts of this case. The Minnesota Legislature created this statutory remedy to provide taxpayers with a speedy resolution of property tax challenges and to maintain the flow of revenue to local governments for their ongoing operations while providing a meaningful post-deprivation remedy to taxpayers. *Fichtner v. Schiller*, 271 Minn. 263, 135 N.W.2d 877, 880 (1965). The Minnesota Supreme Court had no difficulty reaching the conclusion that the Petitioners failed to demonstrate a viable claim under federal constitutional grounds.

Even the dissenting opinion, relied upon by the Petitioners to support their request for review, does not include any discussion concerning the Petitioners' federal constitutional claims. The dissent simply argues for a different interpretation of Minnesota legislative intent and a different limitation for the scope of the tax petition statute, Minn. Stat. § 278.01. The dissent questions the proper

definition of the terms "assessment" and "levy of an illegal tax" as those terms are used in § 278.01. However, there is no argument from the dissenting justices that the federal constitution requires a different outcome in this case. The dissenting opinion does not support the Petitioners' request for review on federal constitutional grounds.

If no significant federal constitution question exists, this Court should not grant the Petition. This Court has recognized that states have broad discretion in constructing systems for local taxation and has adhered to the policy that it will not interfere with state tax matters unless the state's actions result in a violation of federal constitutional rights. *Allied Stores of Ohio v. Bowers*, 358 U.S. 522, 79 S.Ct. 437, 3 L.Ed. 2d 480 (1959). That is clearly not the case here.

The state law basis for the Minnesota Supreme Court's decision is sound, and this court should not review the Minnesota Supreme Court's interpretation and application of the state's property tax laws. There is no significant federal constitutional issue. The facts of this case and the Minnesota Property Taxation System are unique and not of general importance to other states or the nation. Other jurisdictions will not benefit in any significant way from this Court's review of this unique fact situation and Minnesota's tax procedures. This state decision does not merit review by this Court.

II. THE DECISION OF THE MINNESOTA SUPREME COURT IS NOT IN CONFLICT WITH THE PRIOR DECISIONS OF THIS COURT.

The Petitioners suggest that the remedies provided to property taxpayers by the Minnesota Legislature violate the Due Process Clause of the Fourteenth Amendment. The Petitioners also assert that the errors committed by the county assessor in the property assessment process violate the Equal

Protection Clause of the Fourteenth Amendment. The Petitioners are wrong on both counts.

1. Equal Protection

The Minnesota Supreme Court did not find any actionable claim under the Equal Protection Clause of the Fourteenth Amendment. However, the Petitioners assert that the Minnesota Supreme Court utilized the wrong standard when it reached this conclusion.

The Minnesota Supreme Court required the Petitioners to demonstrate that the assessor's classification error was intentional, systematic or arbitrary to state a valid Equal Protection claim. (Appendix to the Petition for Writ of Certiorari, 23a). The burden imposed upon the Petitioners is consistent with prior decisions of the Minnesota Supreme Court and this Court.

In *Allegheny Pittsburgh Coal Co. v. County Commissioner of Webster County*, 488 U.S. 336, 339-340, 109 S.Ct. 633, 102 L.Ed. 2d 688 (1989), a viable Equal Protection Clause claim was asserted when the trial court found that the Webster County assessor "systematically and intentionally" violated the Equal Protection Clause by intentionally assessing property at 50% of the most recent sale price for the property. In *Iowa-Des Moines National Bank v. Bennett*, 284 U.S. 239, 245, 52 S.Ct. 133, 76 L.Ed. 265 (1931), the court found, or was able to assume based upon the facts presented, that intentional, systematic discrimination existed that gave rise to an Equal Protection Clause claim. This Court stated, in *Village of Willowbrook v. Olech*, 528 U.S. 562, 120 S.Ct. 1073, 1074-1075, 145 L.Ed. 2d 1060 (2000), that the purpose of the Equal Protection Clause is to prevent intentional and arbitrary discrimination.

The Minnesota Supreme Court employed the proper standard for determining whether the Petitioners demonstrated a viable Equal Protection Clause claim as set

forth by this Court. Since the Petitioners did not produce evidence that the county engaged in intentional or arbitrary discrimination, the Minnesota Supreme Court correctly concluded that there was no violation of the Equal Protection Clause.

2. Due Process

The Petitioners assert that they received inadequate notice of the information needed to contest the taxes assessed against their property. They also suggest that the remedies provided by the Minnesota Legislature to contest property taxes are not meaningful or do not permit timely intervention. In fact, the notices of the relevant information regarding property taxes received by and the remedies available to Minnesota property taxpayers are both meaningful and timely.

A. The Petitioners received adequate multiple notices

Taxpayers receive three separate notices or statements regarding the value, classification and amount of taxes assessed against their property. For the taxes payable in 1993 and 1994, the notices for the property that was to receive the lower tax rate on the first $100,000 in value listed the classification as "commercial preferred" or "industrial preferred." The Petitioners' property tax notices and bills did not include this designation. The lack of the "preferred" classification designation on their notices and tax statements indicated that they would not receive this tax break. The "truth-in-taxation" notices were mailed to the Petitioners in mid-November of the year preceding the year the taxes were due. This notice contained all of the information needed to determine whether the assessor intended to apply the preferred tax rate to this property.

The Petitioners assert that the exact tax rates to be applied should have been included in the notices and statements. For the "truth in taxation notices," this would not be possible. At the time those notices are mailed, the extension rates are not known since the local taxing jurisdictions have not set their tax levies for the following year. Regarding the final tax statement, the Minnesota Supreme Court recognized that it would not be feasible to require counties to put every piece of information related to the complicated calculation of the amount of the property taxes into the tax statements. However, approximately 4 _ months prior to the deadline for filing a tax petition, the Petitioners did receive sufficient information to conclude that their property was not going to receive the "preferred" property lower tax rate. The notices received by the Petitioners were sufficient to comply with Due Process Clause requirements.

B. The Petitioners had multiple opportunities to challenge the tax assessments

The taxation of real property is an imperfect science. The exact market value of a parcel of land at any point in time is open to question. The proper classification for property based upon its use or other relevant factors may be a matter of debate. A property may be eligible for a reduced tax rate based upon a classification that the assessor does not assign and does not apply to that property. State courts and legislatures have recognized that taxpayers must have a mechanism to obtain review of the tax assessment process. In any of these situations, when the state provides a post-deprivation remedy such as the tax petition process or abatement process in Minnesota, the Due Process Clause requires that this process provide "an opportunity to contest the validity of the tax and a 'clear and certain remedy' designed to render the opportunity meaningful by preventing

any permanent unlawful deprivation of property." *McKesson Corporation v. Division of Alcoholic Beverages and Tobacco*, 496 U.S. 18, 40, 110 S.Ct. 2238, 2252, 110 L.Ed.2d 17 (1990). In Minnesota, property taxpayers have several opportunities to challenge any errors occurring in the tax assessment process and, collectively, they clearly satisfy the requirements of the Due Process Clause.

Taxpayers have the option to appear before the Local Board of Assessment and Equalization. Taxpayers can file a tax petition pursuant to Minn. Stat. § 278.01 and litigate their concerns before the district court or Minnesota Tax Court. They can also file abatement requests directly with the County Board in the county where the property is located. Every year many taxpayers employ these remedies to obtain relief from errors. These remedies clearly satisfy the Due Process Clause fundamental requirement of providing a meaningful opportunity to be heard. The fact that Dakota County granted the Petitioners relief for the taxes payable in 1994 after they filed a timely § 278.01 tax petition is proof of that fact.

States are free to impose procedural requirements on taxpayers who wish to obtain post-deprivation relief, and these can include "relatively short statutes of limitations." *McKesson*, 496 U.S. at 45. States can also terminate a taxpayers' claim for failure to comply with procedural rules. *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 102 S. Ct. 1158, 71 L.Ed. 2d 265 (1982). Minnesota's statute of limitations for commencing tax petition actions under § 278.01 is a reasonable restriction that encourages prompt review of local tax assessments while securing adequate revenue for ongoing government operations. As noted by the Minnesota Supreme Court, the § 278.01 deadline occurred well after the date the Petitioners received the "truth in taxation" notices.

After reviewing the facts of this case, the Minnesota Supreme Court properly concluded:

> Due process does not require any particular form of process as long as it provides notice and a meaningful opportunity to be heard. Based upon the variety of means provided in Minnesota Statutes to challenge property taxes, we conclude that respondents received constitutionally sufficient due process.

Appendix to Petition for Writ of Certiorari, 21a-22a.

The Minnesota Supreme Court applied this Court's standard for federal due process protections and properly concluded that no violation of the federal Due Process Clause occurred here.

C. Petitioners successfully utilized Minn. Stat. § 278.01 to obtain relief for one of the two tax years when the incorrect classification was applied

The Minnesota Legislature has provided adequate pre-deprivation and post-deprivation remedies to allow property owners to challenge the classification of their property at multiple stages of the tax assessment process. However, the Legislature has limited the time period during which such challenges must be commenced. The Petitioners failed to commence timely challenges to the classification of their properties and, therefore, waived their rights to recover any excess tax payments.

The Petitioners complied with the requirements of the tax petition statute, Minn. Stat. § 278.01, for taxes payable in 1994 and obtained relief from Dakota County. However, the Petitioners failed to file a timely tax petition for taxes payable in 1993, and also failed to utilize the other remedies available to them. Therefore, Dakota County did not refund any taxes

paid on these properties in 1993. Based upon these facts, it cannot be said with any true conviction that the Petitioners lacked any meaningful remedy under Minnesota law.

This case does not contain the bait and switch problem that arose in *Reich v. Collins*, 513 U.S. 106, 115 S.Ct. 547, 130 L.Ed. 2d 454 (1994). The Minnesota Legislature has not limited taxpayers to receiving prospective relief only as occurred in *McKesson*. Taxpayers that comply with the procedural requirements of Minnesota's property tax remedies will obtain a meaningful hearing and, if they present a valid claim, a retrospective refund of taxes improperly assessed.

Dakota County provided the Petitioners with relief from the 1994 taxes in compliance with the procedural requirements established by the Minnesota Legislature. The Minnesota property tax remedies are adequate to protect taxpayers' Due Process rights. Intervention by this Court is not necessary.

CONCLUSION

It is understandable that the Petitioners are disappointed the classification error occurred, and that the cause of action to challenge the error for the 1993 taxes expired before they filed a tax petition. However, their disappointment and the facts of this case do not justify overturning Minnesota's statutory mechanism for challenging assessment process errors that has been in existence for 66 years.

The Petitioners' right to challenge the classification of their property, and seek a refund of property taxes paid, is a question of state law and is independent of the federal questions that Petitioners attempt to assert. The Minnesota Supreme Court's decision is based upon legally appropriate and adequate state law grounds. The statutory remedies provided to the Petitioners do not violate any federal constitution provisions. Accordingly, the Dakota County

Respondents respectfully request that this Court deny the Petition for Writ of Certiorari.

Respectfully submitted.

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